STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS BELL TELEPHONE COMPANY (AMERITECH ILLINOIS) and **Royal Phone Company, LLC** Joint Petition for Approval of Negotiated Interconnection Agreement dated September 17, 2002 pursuant to 47 U.S.C. § 252	))))	**DOCKET NO. 02-0651**
ILLINOIS BELL TELEPHONE COMPANY (AMERITECH ILLINOIS) and Easton Telecom Services, LLC Joint Petition for Approval of Negotiated Interconnection Agreement dated September 11, 2002 pursuant to 47 U.S.C. § 252	)))))))	**DOCKET NO. 02-0654**

REPLY BRIEF OF THE
STAFF OF THE ILLINOIS COMMERCE COMMISSION

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November 21, 2002

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NOW COMES the Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, and, pursuant to 83 Ill. Adm. Code 763.400, respectfully submits its Reply Brief in the above-captioned matter.

1. Burden of Proof and Standard of Proof

Burden of Proof

A petitioner in an administrative proceeding has the burden of proof, and relief will be denied if he fails to sustain that burden. Hamwi v. Zollar, 299 Ill. App. 3d 1088, 1092-93; 702 N.E.2d 593; 234 Ill. Dec. 253 (1st Dist. 1998). Indeed, the Illinois Supreme Court has gone so far as to state "courts have **uniformly** imposed on administrative agencies the customary common-law rule that the moving party has the burden of proof." Scott v. Dept. of Commerce and Community Affairs, 84 Ill. 2d 42, 53; 416 N.E.2d 1082 (1981) (emphasis added).

This is entirely consistent with Commission practice. In Commission proceedings, parties seeking relief must demonstrate that they are entitled to the relief sought. *See* Chicago and Eastern Illinois Ry. Co. v. Road Dist. No. 10, 353 Ill. 160, 166 (1933) (stating the burden is on the petitioner to show, by a preponderance of the evidence, that it is entitled to the relief sought).

The Joint Petitioners are the parties seeking relief here, namely the approval of an agreement. Accordingly, they bear the burden of proof.

Standard of Proof

Section 10-15 of the Illinois Administrative Procedure Act provides that "[u]nless otherwise provided by law or stated in the agency's rules, the standard of proof in any contested case hearing conducted under this Act by an agency shall be the preponderance of the evidence." 5 ILCS 100/10-15. The Commission has observed that the Administrative Procedure Act standard appears to be "the appropriate standard in all contested cases[.]" *Order* at 4, Illinois Commerce Commission on its Own Motion: Amendment of 83 Ill. Admin. Code Part 200, ICC Docket No. 92-0024 (April 29, 1992)[1]. Consequently, the standard of proof in this case is the preponderance of the evidence standard.

It cannot be credibly argued that any other standard applies, for the following reasons.

The standard of proof applicable to a particular type of adjudication must balance the private interest implicated with the governmental interest, and the permanency of the loss threatened by the government action. Feliciano v. Illinois Racing Board, 110 Ill. App. 3d 997, 1000; 443 N.E.2d 261 (1st Dist. 1982). The primary factor in determining the standard of proof in an administrative proceeding is the interest that will be affected by the administrative decision, viewed in the light of competing societal interests, rather than the conduct which forms the basis for the administrative action sought. Sutton v. Edgar, 147 Ill. App. 3d 723, 730; 498 N.E.2d 295; 101 Ill. Dec. 113 (4th Dist. 1986). The protection of purely economic interests does not require a standard of proof as demanding as the protection of more fundamental rights, such as the individual liberty of parental rights. Feliciano, 110 Ill. App. 3d at 1002.

It is worthy of note, that in Illinois administrative proceedings, preponderance of the evidence is the standard, even in proceedings where both civil and criminal penalties could attach; clear and convincing evidence is almost never required. St.

[1] It is worthy of note that the Chicago Bar Association, which rarely participates in

Charles Bd. of Education v. Adelman, 97 Ill. App. 3d 530, 532, 423 N.E.2d 254 (2nd Dist. 1981). Indeed, the U.S. Supreme Court tends to require application of the "clear and convincing" standard only where a significant interest – generally a life or liberty interest, as opposed to a property interest-- is implicated. *See, e.g.*, Cruzan, by Cruzan *et ux*. v. Director, Missouri Department of Health, *et al*. 497 U.S. 261; 110 S. Ct. 2841; 111 L. Ed. 2d 224 (1990) (discontinuance of nutrition and hydration of a person diagnosed to be in a persistent vegetative state); Santosky v. Kramer, 455 U.S. 745, 71 L. Ed. 2d 599, 102 S. Ct. 1388 (1982) (termination of parental rights); Addington v. Texas, 441 U.S. 418, 60 L. Ed. 2d 323, 99 S. Ct. 1804 (1979) (involuntary civil commitment); Woodby v. Immigration & Naturalization Service, 385 U.S. 276, 17 L. Ed. 2d 362, 87 S. Ct. 482 (1966) (deportation); Chaunt v. United States, 364 U.S. 350, 5 L. Ed. 2d 120, 81 S. Ct. 147 (1960) (denaturalization); Schneiderman v. United States, 320 U.S. 118, 87 L. Ed. 1796, 63 S. Ct. 1333 (1943) (denaturalization). These cases, of course, deal with the loss of one's life, child, citizenship, right to continue to reside in the United States, or freedom to leave a mental hospital. It is hard to characterize contract rights arising under a negotiated interconnection agreement as implicating any such interest.

Moreover, as is readily apparent, all of the above-noted rights – life, custody of children, citizenship, residency, personal freedom – to which the "clear and convincing" standard applies, are rights enjoyed by natural persons. Illinois Bell Telephone (hereafter "Ameritech"), Royal Phone Company LLC, (hereafter "Royal") and Easton Telecom Services LLC (hereafter "Easton") are, hopefully needless to say, not natural persons, but in fact corporations. Royal or Easton cannot be deprived of, or even have,

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Commission proceedings, filed comments in Docket No. 92-0024 supporting the preoponderance parental rights, nor can either be deprived of life, except in a very technical sense, nor can either be removed from artificial life support. Likewise, Ameritech Illinois cannot be deported or involuntarily committed to a mental hospital[2]. The notion that any entity is subject to such legal jeopardy, or has associated rights, verges upon absurd.

Illinois courts have deemed the "preponderance" standard to adequately protect the rights of parties to administrative proceedings where the property interest at issue is a tenured teaching position, Chicago Bd. of Education v. State Board of Education, 113 Ill. 2d 173; 497 N.E.2d 984; 100 Ill. Dec. 715 (1986), Chicago Bd. of Education v. Payne, 102 Ill. App. 3d 741 (1st Dist. 1981), Adelman, *supra*; a jockey's license; Feliciano, *supra*, or the right to drive a motor vehicle. Sutton, *supra*. Likewise, courts have deemed the "preponderance" standard to be proper before fire and police merit boards, McCoy v. Board of Fire & Police Commissioners, 54 Ill. App. 3d 276 (1977); Ritenour v. Police Board, 53 Ill. App. 3d 877 (1977), and civil service boards. Drezner v. Civil Service Comm'n, 398 Ill. 219 (1947). All of these property interests are as significant as, if not more significant than, the contractual interest a telecommunications carrier has in an interconnection agreement.

Additionally, 47 U.S.C. 252(e)(3) expressly reserves State commissions the right to "establish[] or enforc[e] other requirements of State law in its review of an agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements." The wholesale performance remedy plan approved by the Commission in Docket 01-0120 (hereafter referred to as "Remedy Plan") is the only remedy plan this Commission has evaluated in detail and approved. The Commission

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standard. Order at 1-2.

also expressly stated that "any future reference to a Remedy Plan in place in Illinois, either voluntarily or pursuant to Commission Order, shall mean the Remedy Plan adopted pursuant to this Order." Order, Docket 01-0120 at 20 (hereafter referred to as "Remedy Plan Order"). Given the Commission's statement that the Remedy Plan is the plan they want in place in the "future", that is, the remedy plan to which Staff is comparing the SBC11STATE plan.

2. Remedy Plans are Intended to Secure Future Performance, Therefore Current Performance is Irrelevant

Ameritech continues to present statistics on its current performance, such as Table 1 on pages 12-13 of Mr. Ehr's testimony, or the amount of Tier 1 payments it has made over the last year, id. at 17-18, and in so doing essentially ignores the key purpose of a remedy plan. A remedy plan's focus is to influence future performance, New York 271 Order, ¶433; current performance provides little guidance.

One of the key factors that influences future performance is the amount of payments Ameritech would need to make if it fails to meet the standards, and that is the potential liability at risk. Id. The Remedy Plan increased the amount of Tier 1 and 2 payments, Remedy Plan Order at 36-38, and established a soft annual cap of 36% of Ameritech's net revenue. Id. at 41-42. In comparison, the SBC11STATE plan is silent regarding the potential liability at risk is, and Ameritech, unlike the Docket 01-0120, present no evidence in this docket to inform the Commission of the potential liability it would incur under the SBC11STATE plan. In fact, Ameritech objected to presenting

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[2] Were proceedings of this nature contemplated, the Staff agrees that a "clear and convincing" standard would be the proper one.

such information during discovery. Staff's best guess is that the SBC11STATE plan potential liability at risk is about $6,120,000 (aggregate monthly cap of 510,000 x 12 months). That is drastically lower than the approximate $180.5 million[3] soft cap, for Tier 1 payments, ordered by the Commission in the *Remedy Plan Order*. Id. at 41-42. Given the that the potential liability under the SBC11STATE plan is dramatically less than what the Remedy Plan orders, the SBC11STATE plan is materially different than the Remedy Plan and therefore is not in the public interest.

3. The *Remedy Plan Order* is Not A Grab-bag From Which Ameritech can Pick and Choose what to Offer

Ameritech claims that it makes Tier 2 payments (AI IB at 22-24), that carriers can "opt in" to the Remedy Plan (id. at 28), and that carriers are provided the mini-audit, pursuant to the order in Docket 01-0120 (id. at 32). This generalized application of the Remedy Plan does not conform to the Commission's decision regarding how the remedy plan is to be implemented. See Remedy Plan Order, at 17-19 (Implementation Of The Remedy Plan).

In Docket 01-0120, the Commission approved the Remedy Plan to be used by CLECs in Illinois, and provided two ways for a CLEC to obtain the Remedy Plan, without preempting the CLEC's ability to obtain the Remedy Plan pursuant to 47 U.S.C. §252(i). Id. Either a carrier, with a current interconnection agreement, can "opt in" to the Remedy Plan without amending its interconnection agreement, or the Remedy Plan "shall be incorporated into all *currently* effective interconnection agreements in the form

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3 36% of Ameritech's net return in 1999 was $361.45 million. See Remedy Plan Order, at 43. For sake of comparison, splitting the amount of payments equally between Tier 1 and 2, therefore an estimate of the potential liability at risk for each Tier would be ½ of the $361 million, or $180.5 million.

of an Amendment to the Interconnection Agreement." Remedy Plan Order, at 17-18. The Remedy Plan Order was only written in reference to "currently effective interconnection agreements"; presumably with the intent that all future interconnection agreements would include the Remedy Plan, thereby *foregoing the ordeal of evaluating every remedy plan in every negotiated agreement*. The Commission reinforced this point when it stated "therefore, the Commission wishes to clarify that any future reference (in either concurrent or prospective dockets before the Commission) to a Remedy Plan in place in Illinois, either voluntarily or pursuant to Commission Order, shall mean the Remedy Plan adopted pursuant to this Order." Id. at 20. The Remedy Plan was intended to be one plan, and not taken in parts in the fashion that Ameritech has proposed (without following customary drafting procedures which would require statements enumerating which sections of the Remedy Plan are incorporated into the SBC11STATE plan, or which sections of the Remedy Plan are replaced by which provision of the SBC11STATE plan). Ameritech's proposal leads to confusion, and an undue burden on Staff to determine which provision of the Remedy Plan applies and which do not, an when they apply.

Additionally, the "opt in" may not available to all CLECs, at any time, as Ameritech argues. AI IB at 28. Although the Remedy Plan Order is unclear on this point, the "opt in" appears to be available to CLECs with current interconnection agreements, and all future CLECs may automatically receive the Remedy Plan. See Remedy Plan Order at 17-18. Since this point has not yet been clarified by the Commission, Staff argues that Ameritech ought to clarify its position in the agreement

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itself. If the agreement specifically referenced the availability of the opt-in option, Staff would not have an issue. Staff's concern is that Ameritech will, at some later point, reconsider the interpretation of the Remedy Plan Order it has proposed in this proceeding and argue that opt-in is not available to all CLECs.

Similarly, the mini-audit provision may not be automatically available to all CLECs, as Ameritech, in this proceeding, proposes it is (AI IB at 32), since the mini-audit is part of the Remedy Plan, and therefore can only be implemented as stated in the Remedy Plan Order, and as described above.

4. Ameritech's Empirical Evidence Lacks a Direct Link to Remedy Plans

Ameritech argues that its performance in Indiana and Wisconsin have been either better than, or comparable to, other states, despite the vast majority of CLECs in Indiana and Wisconsin having interconnection agreements either that have the SBC11STATE plan or have no plan at all. AI IB at 16. Further, Ameritech states that this argument then "forecloses any claim [by Staff] that the 01-0120 Plan needs to be in place in order to ensure that Ameritech Illinois will provide excellent service." Id. This is simply untrue. This Commission has analyzed the 01-0120 Remedy Plan and determined that it is the plan that provides the proper incentives to Ameritech to provide sufficient service quality to satisfy the Illinois market and Illinois consumers. To argue that this Commission is precluded from making available in Illinois a different plan from those plans offered in other Ameritech states is preposterous and would mean that this Commission would be severely constrained by the actions of other state commissions in their markets.

There is another problem with Ameritech's argument -- Ameritech's performance is not solely determined by the remedy plans being offered in those other states. There is an intervening factor in the Ameritech region that substantially affects Ameritech's performance results in all five states. Ameritech is in the process of applying for its Section 271 approval in all five Ameritech states. Tr. 162. That requires Ameritech to make changes to its operations support systems to ensure that the wholesale service operations are adequate for state and FCC review. Id. at 162-63. Consequently those changes have resulted in improvements in its wholesale performance. Id. at 163. Therefore, the improved performance may have little to do with the SBC11STATE remedy plan since Ameritech has been improving its OSS over the past eighteen months, in preparation for its Section 271 application. Gaining 271 approval from the FCC is a major motivating factor, since it allows Ameritech to offer long-distance service. See 47 U.S.C. 271.

Staff's position is that the monthly cap for all CLECs of $.51 million is a material variation from the Remedy Plan. Moreover, it permits Ameritech to have too much discretion in allocating payments to those carriers subject to the cap. Ameritech claims that Tier 1 monthly payments under the Remedy Plan have only exceeded $.51 million once in the last year, and therefore the $.51 million cap makes no difference. AI IB at 25-26. This assertion is misleading.

The Tier 1 payments Mr Ehr references include payments Ameritech makes to both carriers who have the Remedy Plan and that have the SBC11STATE plan. There are 50 carriers who have interconnection agreements with the SBC11STATE plan. Tr. 178. Ameritech states that the carriers who have the Remedy Plan pay on more transactions than the carriers on the SBC11STATE plan (AI IB at 25), therefore, if all companies were under the Remedy Plan, the Tier 1 payments would have been greater. If the payments were greater, there would be a greater possibility that the $.51 million would have been exceeded more than once. Therefore, Ameritech's analysis is faulty.

5. The Basic Premise That Wholesale Service is Protected by a Remedy Plan is an Accepted Proposition

Ameritech asserts that Staff has failed to support the premise that wholesale service quality is driven by the stringency of the performance measures and performance remedy plan. AI IB at 18-20. Ameritech's argument overlooks Staff's testimony describing the benefits of the Remedy Plan, both in this docket and in Docket 01-0120, as well as the *numerous* wholesale remedy plans that have been a key part, or condition, of every Section 271 approval. Ameritech is attempting in this docket to relitigate the 01-0120 docket, something the Commission clearly wanted to avoid.

Ameritech argues that Staff did not cite to any studies to support the basic premise that a "more stringent plan would yield higher quality performance." Id. at 18. This statement sidesteps Section 252(e)(3) which grants the state's authority to protect its intrastate service quality standards. In the *Remedy Plan Order* the Commission established a wholesale performance remedy plan is intrastate service quality standards established so that Ameritech's local markets stay open to competition. Remedy Plan Order at 11-12. That plan was intended to promote competition, and the intended beneficiary of competition is the general public. Therefore, not only is it proper to compare the SBC11STATE plan to the Remedy Plan as an intrastate service quality standard, it is the standard intended to protect the public interest; hence, it is a minimum standard or floor.

Additionally, in Docket 01-0120, the Commission's justification for increasing the payment amounts of the Texas Plan was based on its finding that Ameritech's wholesale service to CLECs was substandard "on a frequent and ongoing basis[.]" Remedy Plan Order, Docket 01-0120 at 41; *see also* Staff Ex. 1.0 at 11. The

Commission also stated that its objective in establishing a remedy plan was to institute ". . . a remedy plan that adequately compensates the CLECs for Ameritech's failure to met the approved performance standards and sufficiently motivates Ameritech to end discriminatory conduct that impedes the development of competition in Illinois." Remedy Plan Order at 11. Those findings have not been overruled in any subsequent docket; therefore the Commission already made a finding in Docket 01-0120 that for service quality to improve, the level of payments needed to be higher that what Ameritech was paying at the time of the Order.

The FCC has repeatedly found that remedy plans ought to prevent deterioration of wholesale performance in the future. In its Section 271 reviews, the FCC has found that a remedy plan is beneficial for ensuring that the local market remains open to competition. In the New York 271 Order, the FCC stated that, "we find the performance monitoring and enforcement mechanisms in place in New York, in combination with other market factors, provide strong assurance that the local market will remain open after Bell Atlantic receives section 271 authorization." New York 271 Order, ¶ 429.[4] The plan set in place in New York is similar to the Remedy Plan, since both established a potential liability at risk, a performance measurements with standards, a performance remedy plan, and was reasonably developed to detect and sanction poor performance. *See* Id. at 433. The FCC has repeated these sentiments in approving 271 applications in Texas, ¶420, Kansas/Oklahoma, ¶269, Massachusetts, ¶236-37, Connecticut, ¶76, Pennsylvania, ¶127, Arkansas/Missouri, ¶127. *See* Attachment A.

Additionally, one does not need a degree in economics to understand that

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[4] *See* Attachment A.

companies respond to profit opportunities. As a general rule, when the benefit to a company from taking an action exceeds the cost, the firm will undertake that action. There is no question that Ameritech profits from reduced competition, and that Ameritech can reduce competition by providing substandard service to its competitors. Ameritech's argument that it will provide adequate service to its customers regardless of the remedy plan it uses completely ignores the *Remedy Plan Order*. In the *Remedy Plan Order* the Commission explicitly stated that "[t]he current system is not working and something must be done to give Ameritech meaningful incentive to provide the CLECs with service that is not substandard." Remedy Plan Order at 38. Ameritech's proposal to reject the Commission's ordered Remedy Plan, by not offering to Royal/Easton, should itself be rejected.

Thus, in light of the Commission's findings, the FCC's position on remedy plans and economic theory, Ameritech's assertion is incorrect.

6. Determination of Potential Liability at Risk

Ameritech claims that Staff has not proven that the SBC11STATE plan will payout less than the Remedy Plan. AI IB at 21. Staff need not make that argument, since the burden on Staff is to simply identify differences between the plans that would prevent the SBC11STATE plan from complying with the Commission's order[5]. *See infra* Section 1. Staff has met its burden by identifying all of the deficiencies that would result

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[5] A prominent Chicago telecommunications executive recently observed that "It's a sad day for customers when a major carrier refuses to play fairly and **abide by a regulator's order**[.]"Carrie Hightman, president of Ameritech Illinois, quoted in "SBC says MCI still misleading consumers: Regulators issued a warning in July," Chicago Tribune, November 21, 2002 (emphasis added).

in a SBC11STATE plan Tier 1 payment that is less than what would be paid under the Remedy Plan. Staff IB at 25-35.

7. Deferment of Payments for Three Months for New Services and Unbundled Network Elements is neither Sensible nor Reasonable

Ameritech argues that it is perfectly sensible, and consistent with industry practice, to defer payments for a three month "start up" period, such as provided in sections 6.3 and 12.1 of the SBC11STATE plan. AI IB at 31. If deferring costs for three months is so sensible and consistent with industry practice, why are similar provisions absent from Ameritech's FCC carrier-to-carrier performance plan, *see* AI Ex. 1.0, Sched. 1, Attach. A and A-3, the Remedy Plan, *see* Remedy Plan Order, Attach. A, and the Texas Plan[6].

8. The SBC11STATE's Requirement That a Performance Measure have a Minimum of 30 Data Points/Transactions Deprives the CLECs of Payments that it Would Have Received Under the Remedy Plan

Ameritech argues that Staff does not explain how the minimum requirement of thirty transactions, set in Section 7, could deteriorate Ameritech's wholesale performance. AI IB at 32. As Staff explained in its initial brief, Section 7 of the SBC11STATE plan states that remedies will be paid on a performance measure only when there are more than thirty data points/transactions for that measure. Staff IB at 28; *see also* APPENDIX PERFORMANCE MEASURES, sect. 7.

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[6] The Remedy Plan was based on the Texas Plan, Remedy Plan Order at 11 (staff recommending the "Commission retain the Texas Plan with the modifications addressed below), however the Remedy Plan Order makes no finding removing such a provision. If the provision is not in the Remedy Plan, and the *Remedy Plan Order* never removed it from the Texas Plan, the provision must never have been in the Texas Plan.

In contrast, the Remedy Plan allows for payments when there are as few as ten data points/transactions. Remedy Plan Order, Attach. A, Sect. 12.1. A plan that allows Ameritech to only pay when there are thirty data points/transactions, when the Commission has approved a plan that requires payment on a performance measure that has at least ten data points/transactions, deprives the CLEC of payments on performance measures that the Commission has already found to be reasonable. Specifically, the Commission has found that CLECs should receive payments for missed performance measures if there are more than ten transactions, therefore under the SBC11STATE plan the CLEC would not receive payments it would receive under the Remedy Plan for performance measure where there are between ten and thirty-one transactions. Since the CLEC will lose payments under the SBC11STATE plan that it is entitled to receive under the Remedy Plan, the SBC11STATE plan materially varies from what the Commission has approved for wholesale service remedy plans.

9. Ameritech is in error when it argues that the process on how agreements are made cannot be a consideration.

The evidence in this case shows that Ameritech has been implementing in Illinois anything but what Ameritech was to implement under Condition 30 of the Merger Order, namely, the Texas Remedy Plan and its successor, the 01-0120 Remedy Plan. Ameritech admits that it was to implement these plans in Illinois at pages 5-6 of its Brief. Ameritech does not even attempt to justify its imposition of a different remedy plan in Illinois, whenever these small new CLECs seek to obtain interconnection agreements. Ameritech cannot justify what it has been doing. Indeed, allowing the established, bigger CLECs into the better Illinois plans, while pushing the newer, smaller CLECs into a lesser plan, both in terms of performance measurements and penalties, violates the public interest, convenience and necessity under 47 USC 252 (e) (2) as undue preferential/discriminatory treatment of CLECs who should be treated identically.

Although Ameritech has claimed that these new CLECs can opt into the 01-0120 Remedy Plan, Ameritech hopes to delay matters long enough so that the 01-0120 Remedy Plan disappears. Moreover, there is no justification for making these new carriers jump through any additional hoops. The Commission has announced the performance measurements and remedies upon which all future plans must be based. Remedy Plan Order at 20.

Ameritech argues that its 13 State/11State Plan is just as good as the performance measurements and remedy plans that were established by Commission order. However, the Commission at the time of the merger order was well aware of the pending FCC decisions on performance measurements and remedy plans, upon which Ameritech claims the 13State/11State Plan is based. Merger Order at 209-232, *see esp*. 215, 224-5, 232. The Commission ruled in essence that the FCC's plan was irrelevant in Illinois, since everything that the FCC was considering was included in the Texas Remedy Plan. Since the 01-0120 Plan contains additions and refinements to the Texas Remedy Plan, everything in the 13State/11State Plan is likewise contained in the 01-0120 Plan.

If the Commission was satisfied with the more limited, pending FCC plan, the Commission would not have ordered implementation of the Texas Remedy Plan. Ameritech's argument that its 13State/11State Plan is just as good as the 01-0120 Remedy Plan is an improper collateral attack on the merger order. 220 ILCS 5/ 10-201(f). The Commission in fact has already ruled in the Merger Order that 13State/11State Plan is not in the public interest in Illinois.

In the case of Royal, the inconsistency of what was presented to the Commission and what was claimed in the Joint Petition indicates another reason why examination of the negotiation process is not irrelevant. Par. 1 of the Joint Petition claims that the Ameritech-Royal agreement is a 47 USC 252 (i) opt-in of the Ameritech-McLeodUSA Telecommunications Services agreement, otherwise unidentified. Yet Ameritech identifies McLeodUSA as being subject to the 01-0120 Plan, and the 11State Plan is too new to have ever been part of any earlier Ameritech/McLeodUSA agreement. The fact to be drawn is that Ameritech altered the agreement being opted into, not with the current version of the negotiated agreement between Ameritech and McLeodUSA, but with the boilerplate language Ameritech prefers.

Ameritech appears to apply a rather unique view of opting into an existing agreement. 47 USC 252(i). Again, Royal was never informed that, as to performance measurements and remedies, Royal was not opting into the Ameritech/McLeod agreement, either expired or current.

Finally, as to the first three months from first purchase of a service issue (Section 6.3 of the Appendix), although Ameritech's attorney has indicated in his questioning that, if a CLEC is already obtaining a particular service from Ameritech, that time is counted for Section 6.3 purposes, Ameritech's witness did not know that for certain. Tr. 195-6. Ameritech has not tried to justify that, no matter how commonly provided to CLECs the service being sought by the new CLEC, Ameritech will not risk a penalty for the first one-quarter of a year that Ameritech provides the service to the new CLEC.

WHEREFORE, for all the reasons set forth herein, the Staff of the Illinois Commerce Commission respectfully requests that its recommendations set forth in its initial brief be adopted in this proceeding.

Respectfully submitted,

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November 21, 2002

ATTACHMENT A

Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, FCC 99-404 CC Docket 99-295 (rel. Dec. 22, 1999) (*New York 271 Order*), *aff'd*, *AT&T Corp. v. FCC*, 220 F.3d 607 (D.C. Cir. 2000).

Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas, FCC 00-238, CC Docket 00-65 (rel. June 30, 2000) (*Texas 271 Order*);

Joint Application by SBC Communications Inc., Southwestern Bell Tel. Co., and Southwestern Bell Communications Services, Inc., d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, FCC 01-29, CC Docket 00-217 (rel. Jan. 22, 2001) (*Kansas/Oklahoma 271 Order*), *aff'd in part*, *remanded in part sub nom. Sprint Communications Co. v. FCC*, No. 01-1076 (D.C. Cir. Dec. 28, 2001);

Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) And Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts, FCC 01-0130 CC, Docket 01-9 (rel. April 16, 2001) (Mass *271 Order*)

Application of Verizon New York Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc., for Authorization to Provide In-Region, InterLATA Services in Connecticut, FCC 01-208, CC Docket 01-100 (re. July 20, 2001) (CT 271 *Order*)

Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks Inc. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania, FCC 01-269, CC Docket 01-138 (rel. Sept. 19, 2001) (*Pennsylvania 271 Order*);

In the matter of Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc., d/b/a/ Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region , InterLATA Services in Arkansas and Missouri, FCC 01-338, CC Docket 01-194 (rel. Nov. 16, 2001) (*Arkansas/Missouri 271 Order*).